

SOUTH AFRICA / JUDGMENT

Damage to wedding gown by drycleaner: Restore if possible (2014114294) [2014] ZACGSO 13 (23 May 2014)

[2014] ZACGSO 13

COURT

Consumer Goods and Services Ombud

BEFORE

N Melville

CASE / FILE NUMBER

2014114294

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Damage to wedding gown by drycleaner: Restore if possible

Complaint ref

: 2014114294

Adjudicator : N Melville

Date : 23 May 2014

1. Summary of complaint

In October 2013 the complainant sent his wife`s wedding gown for dry cleaning. When he collected the gown he noticed that the cleaning

process had discoloured it. The supplier (dry cleaner) sent the gown to a laboratory in America to have it tested. The results showed that the dry cleaners were not at fault, because the gown manufacturer had exposed it to UV LIGHT[1]. The complainant was billed for R600 for the dry cleaning. At one stage, the complainant was informed that if the results showed that the dry cleaner were not at fault, he would have to pay for the courier fees.

He requests a refund of R16 000, being the price of the wedding gown.

2. Summary of outcome

It cannot then be said that the supplier fell short of its duty in terms of section 54 but it failed to fully disclose all risks and hazards relating to a product or activity to a consumer in that it failed to identify the properties of the fabric (fluorescent brightener is detectable with the use of an inexpensive UV lamp) and warn the complainant that discolouration might show up after the dry cleaning process. Recommendation made: If it is possible to restore, the supplier should offer to do so.

3. Supplier's response

The supplier provided a copy of the report from International Textile Analysis Laboratory, USA, and a letter addressed to "Mr & Mrs J". It is not evident what their connection is to the complainant or if this letter actually related to another case. It will for the present purposes be assumed the contents of the letter apply to this case.

According to the letter, when the wedding gown was examined under ultra violet (UV) light, it was evident that it had been treated with a fluorescent brightener during manufacture. The brightener can decompose, causing discolouration, if exposed to light or subjected to heat in tumbling or finishing (it is not clear from the report whether this refers to the manufacturing process or the dry cleaning process). Further, the decomposition becomes noticeable after professional cleaning. The report concluded that the gown was properly cleaned.

The tag on the gown warns that it should not be displayed in direct sunlight or UV light and no perfume, deodorant, hairspray, cosmetics

or liquids with alcohol must come into contact with the garment.

The letter does not deal with the aspect of the courier fees.

The report itself goes further than the letter in that it states that the general location and pattern of the discolouration is indicative of exposure to light in the store and when used/ stored. It makes the point that wedding gowns are intended to be "one wear" items.

The report says "There is no restoration." We take this to mean that the deterioration cannot be restored.

4. Legal considerations

Consumer Protection Act (CPA)

54.

(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—

...

(b) the performance of the services in a manner and quality that persons are generally entitled to expect;

- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services,

having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

Kwamashu Bakery Ltd v Standard Bank Commercial Law Reports (1994) 156 (D & CLD) at 178.

A business that undertakes a business venture voluntarily cannot complain and say it should not be held to a duty of care because it would cost too much or be disruptive of its practice (paraphrased).

Other Considerations

International Practice

Guidelines for the Development of Industry Codes of Conduct for Accreditation under the Consumer Protection Act 68 of 2008

Basic Principles of Complaints Handling

A. Guidelines for Complaints Handling

5. Access to the complaints handling process should be free of charge to a complainant.

White Dyes[2]

Considering that most fabrics are naturally off-white or have a yellowish cast, it is not surprising that white is actually a dye and colour. Optical brighteners, also called fluorescent whitening agents, may also be used to make fabrics as bright white as they can be. Their whiteness fades when these brightening agents are exposed to light (particularly when wet), since they tend to be unstable. As a matter of fact, fading may be in the form of not only a yellowish hue, but even gray or a pink or green cast.

Yellowing is a common problem with white garments. It is common when chlorine bleach comes into contact with resins, which sometimes are added to impart a "permanent press" quality. Avoid this by simply following the care label instructions for bleaching. Normal aging, oxidation, and exposure to atmospheric soils can also cause yellowing; fortunately, this may be resolved by carefully wet cleaning and bleaching, applying a fluorescent brightener during dry cleaning, or using a laundry detergent containing brightener.

International Fair Claims Guide for Consumer Textiles Products

Dry-cleaning Institute of Australia Ltd[3]

A product may contain a fluorescent brightener which has turned an objectionable colour due to the degrading effects of sunlight. If it is found to be a permanent discolouration, the manufacturer assumes responsibility. Neither the consumer, nor the servicing agencies involved, if any, has it within his control to prevent rapid degradation of fluorescent brighteners under normal use conditions.

The only logical preventive measure is to omit the use of the brightener for finishing the fabric, or to make the condition a matter of acceptance by the consumer by applying a specified serviceability label to the product warning the consumer of the possibility of discolouration.[4]

2. Drycleaner Not Responsible - A drycleaner is not responsible for types of damage or behavioural characteristics of textile products

listed below which occur or show up in the processes of dry-cleaning that are not within his control.

- b) Fading (loss or change of colour) due to the low resistance of the colour to water, dry-cleaning solvent or other condition of use, except where such fading can be restored by customary methods.
- i) Discolouration caused by the presence of chemicals (dyes and finishes) applied in manufacture.[5]

5. Assessment

The complainant claims that his wife's wedding gown was discoloured as a result of dry cleaning by the supplier. The supplier refuted this by providing a report from an independent laboratory to the effect that the discolouration was as a result of the decomposition of the fluorescent brightener with which the gown was treated during manufacture and that dry cleaning made the discolouration noticeable. This conclusion is feasible as it is consistent with the explanation regarding fluorescent brighteners referred to above.

It cannot then be said that the supplier fell short of its duty in terms of section 54. That however is not an end to the matter. The spirit of the CPA requires full disclosure of all risks and hazards relating to a product or activity to a consumer. The manufacturer went some way in complying with the guidance provided by the International Fair Claims Guide for Consumer Textiles Products cited above, of applying a specified serviceability label to the product warning the consumer of the possibility of discolouration. This it did by giving specific warnings on the label of the gown, but it did not mention discolouration.

There was a responsibility also upon the dry cleaner, acting with the skill that it is reasonable to expect of someone offering those services, to identify the properties of the fabric (fluorescent brightener is detectable with the use of an inexpensive UV lamp) and warn the complainant that discolouration might show up after the dry cleaning process. This is a customer service issue rather than a liability issue as there is no evidence that the discolouration was caused by the dry-cleaning process, only that the process showed it up.

The Fair Claims Guide suggests that discolouration may be resolved by careful wet cleaning and bleaching, applying a fluorescent brightener during dry cleaning, or using a laundry detergent containing brightener. This may be in conflict with the report's indication that "There is no restoration," depending upon what that means.

6.

Conclusion

In view of this uncertainty and with a view to resolving this matter fairly, the following suggestion is made:

If it is possible to restore the garment by using fluorescent brightener during dry cleaning, or using a laundry detergent containing

brightener as the International Guide suggests, then the supplier ought to have suggested this to the complainant or have used these methods. If that was the case, the supplier should offer to redo the cleaning, using the restoration method suggested.

In view of the tentative nature of this proposed resolution, the supplier is requested to respond to this office by.....,

indicating whether this proposed resolution is feasible and acceptable to it or suggesting another suitable resolution in line

with good customer relations and the finding of this office that the supplier ought to have alerted the complainant to the possibility of discolouration showing up.

As far as the possible claim for the cost of couriering the gown to USA for testing is concerned, in light of the Complaint Guidelines referred to, it is not permitted to charge a consumer for resolving a complaint, which would include this.

[1] This is in conflict with the actual report but this may be due to a misunderstanding on the part of the call centre agent who recorded the complaint. The issue is not material to the case.

[2] See <http://www.dovecleaners.com/drycleaning-info/colours-dyes.php>.

[3] In 1988 it was approved as an American National Standard: see www.drycleaningcomplaints.com/Fair%20Claims%20Guide=DIA.pdf.

[4] At p 16.

[5] At p 17.

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